APR

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 967/2005

APPELLANT Oriental Insurance Company Ltd.

Versus

RESPONDENTS Charan Das through Legal heirs- Smt. Champa Bai/Sampa Bai and others

Judgment post for 3 -7-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 967/2005

APPELLANTS INSURANCE	Oriental Insurance Company Ltd. Branch Office-Manager, Oriental Insurance Company Ltd., Itwari Bazar, **Raigarh (C.G.)**
	Versus
RESPONDENTS CLAIMANTS	1. Charan Das, s/o Hari Bhau (dead), through Legal heirs-
	Smt. Champa Bai/Sampa Bai, widow of Charan Das, aged 60 years, by caste-Mahar, r/o Bodh Bihar, Kayaghat, Sarangarh Road, Raigarh (C.G.)
DRIVER	2. Satish Sharma, s/o Jagdish Sharma, aged 37 years, Occupation – Driver, r/o. Ganja Chowk, Raigarh (C.G.)
OWNER	3. Dinesh Sharma, s/o Radheshyam Sharma, Occupation- Owner, r/o. Ganja Chowk, Raigarh, Tehsil and District Raigarh (C.G.)

Shri Abhisek Sinha, Adv. with Shri Ghanshyam Patel, Advocate for the appellant.
Shri Y.V. Rama Rao, Advocate for the respondent No. 1.
Shri K.N. Nande, Advocate for the respondents No. 2 and 3.

J U D G M E N T

Dhirendra Mishra, J.

The appellant-Insurer has preferred this appeal against the award dated 25th April, 2005 passed by learned Second Motor Accident Claims Tribunal, Raigarh (C.G.) in Claim Case No. 117/2004 whereby a sum of Rs. 85,000/- has been awarded to Smt. Champa Bai, the mother of the deceased Ashok Sonvalkar who died in a motor accident involving Truck No. MBL 6296 new number CG-13-ZC-0322 owned by respondent No. 3, driven by respondent No. 2 and insured by the appellant.

2. Case of the claimant before the Tribunal was that their son was 35 years old on the date of accident. He earned Rs. 10,000/- per month from wholesale and retail trading of tealeaf, soap and grocery items, out of which he contributed Rs. 5000/- towards family. He was returning from weekly market, Rengali on 7-6-2002 along with his goods in the offending truck which was being driven rashly and negligently by respondent No. 2, as a result of which the truck turned turtle near Basanpali Crossing square, Bhikhampali. Two persons died on the spot whereas Ashok Sonvalkar sustained grievous injuries. He was taken to Raigarh Hospital where he died. The report was lodged in police station, Rengali where offence under Section 279, 337 and 304 (A) of I.P.C. was registered against driver Satish Sharma. With these averments a sum of Rs. 20,00,000/- was claimed.

3. The non-applicants No. 2 and 3 in their joint reply denied the averments in the claim petition. They also denied that the deceased was traveling in the said vehicle on 7-6-2002. It was also denied that the driver was driving the vehicle rashly and negligently. It was also denied that the truck turned turtle near Basanpali chowk and the persons sitting in the truck died on the spot and Ashok Sonvalkar sustained grievous injuries who later died. It was further pleaded that the vehicle in question was insured by the appellant for the relevant period. The driver was having valid driving licence and, therefore, compensation, if any, is payable by the insurance company.

4. The appellant-insurance company in reply to the claim petition also denied the averments in the claim petition. The accident was denied and death of Ashok Sonvalkar in the said accident was also denied. The accident by the described truck has also been denied and it was pleaded that only because the vehicle in question was insured by the appellant, the insurer

can not be saddled with the liability to pay compensation. The vehicle was insured as a goods carriage (goods carrying commercial vehicle). In such vehicles, carrying passengers is prohibited and in these circumstances, the insurance company cannot be saddled with the liability. Income of the deceased, the factum of rash and negligent driving, pleading that the deceased was traveling in the said vehicle along with his goods have also been denied. Even injuries sustained by Ashok Sonvalkar and subsequent death has been denied. Registration of offence against the driver has also been denied. It was also pleaded that the driver did not have licence to drive the vehicle and the deceased was traveling in the truck in breach of conditions of the Insurance policy and the claim is exaggerated.

5. The issues were framed. Claimants examined Champabai and Kewal Prasad Kesharwani. No witness was examined by non-applicants No. 1 and 2 whereas the appellant- insurer examined Branch Manager Ramesh Kakwani.

6. Learned Claims Tribunal after appraisal of the evidence awarded a sum of Rs. 85,000/- to the claimant with a finding that the accident occurred on 7-6-2002 due to rash and negligent driving of driver Satish Sharma as a result of which deceased Ashok Sonvalkar who was traveling in the truck for security of his goods died. The claimants are legal representatives of deceased Ashok Sonvalkar. It has not been proved that the owner of the vehicle allowed the vehicle to be driven in breach of insurance police conditions and the insurance company is liable to satisfy the award.

7. Learned counsel for the appellant submits that number of persons were traveling in the goods carrying vehicle as passengers and the finding of the Tribunal that the deceased was traveling as owners of the goods is contrary to the material available on record. From perusal of the final report filed by the

claimants themselves, it would be evident that the driver of the vehicle was carrying passengers violating the conditions of the permit and accordingly the charge sheet under Section 279, 337 and 304 (A) has been filed. The driver and owner themselves in their reply to the application have denied that the deceased Ashok Sonvalkar was traveling in the said vehicle for security of the goods however, the above evidence has been ignored and it has wrongly been held that the deceased Ashok was traveling along with his goods for its security. Reliance is placed on the judgments in the matters of **Oriental Insurance Co. Ltd. –v- Meena Variyal and others** reported in **2007 AIR SCW 2362** and **United India Insurance Co. Ltd. –v- Hussain Sab and others** reported in **2006 ACJ 1352**.

8. On the other hand, learned counsel for the respondents has supported the impugned judgment.

9. I have heard learned counsel for the parties.

10. In para 22 of the claim petition, the claimants have specifically pleaded that deceased Ashok Sonvalkar was returning to Raigarh from weekly market, Rengali with his goods. Claimant Champabai in her deposition has stated that her son had gone to weekly market in the truck of Sharma and he was returning from the market along with his goods and he died in the accident. She had not witnessed the accident therefore she is not aware as to how it occurred. However Ashok used to pay a total freight of Rs. 100/- for to and fro as he used to go to market along with his goods. After the accident, the police had returned the goods belonging to Ashok. A.W. 2 Kewal Prasad Kesharwani has stated that Ashok was returning from Rengali with unsold goods in the truck. Other persons were also traveling in the vehicle and six persons died in the accident. In the cross-examination, this witness has stated that he used to carry goods worth Rs. 25,000/- to 30,000/- and sell goods

worth Rs. 8,000/- to 10,000/- and return with the remaining goods.

11. On the other hand, Ramesh Kakwani, Branch Manager of appellant-company has only stated that the vehicle was insured as a goods carrying commercial vehicle in which carrying passenger is prohibited and as per the policy condition, only goods is permitted to be carried. He has admitted that at the time of accident, he had not gone to the spot. He has also admitted that surveyor report has not been filed.

12. In the matter of **United India Insurance Co. Ltd. -v- Hussain Sab** (supra), learned Single Judge of Karnataka High Court while dealing with liability of the insurance company in an accident involving goods vehicle where the claimants produced F.I.R. and other documents relating to the criminal case which disclose that deceased were traveling in goods vehicle as passengers, held that since the documents produced by the claimants themselves binds them, the owner alone is liable to satisfy the award. In the cited judgment, the Tribunal has held that the deceased were pedestrians and accordingly directed compensation payable by the owners and insurer. However, the F.I.R. which was produced by the claimants, themselves disclosed that the deceased were traveling in the goods vehicle as passengers. In the cited case, it was not the case that the deceased was traveling in the vehicle as owner of the goods for the security of the same, however in the instant case, there is categorical pleading in this regard in the claim petition and oral evidence has been led by the claimants to prove the same. In the absence of any evidence in rebuttal the finding of the Tribunal in this regard cannot be faulted. The manner in which the respondents-non-applicants have denied the pleading of the claim petition is shocking. They have gone to the extent of denying the accident, even the death of deceased

Ashok has been denied in the accident, though no evidence has been led by them to substantiate their reply, therefore argument that the owners themselves have denied that the deceased was traveling in the vehicle for security of his goods has no force. In the matter of **Oriental Insuracne Co. Ltd. -v- Meena Variyal** (supra) the Hon'ble Supreme Court in para 9 of the judgment has observed that though it is true that the Motor Vehicles Act, 1988 insofar as it relates to claim for compensation arising out of accidents, is a beneficent piece of legislation, the Tribunals are required to follow a summary procedure in dealing with a claim, however that does not mean that the Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. In the cited case, the claimant- the employee of the insured preferred a claim petition against the insurer and the owner of the vehicle without impleading the driver of the vehicle as a party, he also claimed that he was drawing specific salary from his employer-insured, however no documentary evidence in support of monthly salary was filed and the Tribunal acted in the oral evidence regarding salary without insisting for documentary evidence. Under these conditions, the Hon'ble Apex Court observed as to why the Tribunal should not insist on the driver of the vehicle being impleaded when claim is being filed and why the documentary evidence of salary should not be insisted upon. However in the present case, the claimants pleaded that the deceased was contributing Rs. 5,000/- per month towards family, however the Tribunal by the impugned award has not accepted the oral evidence of the claimants and has awarded the compensation by assessing notional income of the deceased at Rs. 15,000/- per month as per the schedule appended with the Act. Thus from the evidence available on record, we find no illegality or

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infirmity in the impugned award whereby a sum of Rs. 85,000/- has been awarded to the claimant for the death of her son and liability for satisfying the award has been fastened on the appellant and the owner and driver of the vehicle.

13. The appeal is without substance and accordingly it is dismissed.

Sd/-
Dhirendra Mishra
Judge
3-7-2007